

**Amendment Number 2
to
Contract Number DIR-SDD-2258
between
State of Texas, acting by and through the Department of Information Resources
AT & T CORP.**

This Amendment Number 2 to Contract Number DIR-SDD-2258 ("Contract") is between the Department of Information Resources ("DIR") and AT & T Corp. ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract**, is hereby amended as follows:

The term of this Contract is extended through May 28, 2017 completing the two (2) remaining one-year options. No additional extension options remain.

2. **Contract, Section 4. Pricing**, is hereby removed from the Contract and Transitioned in its entirety to **Appendix A, Standard Terms and Conditions for Services Contracts, Section 7. Pricing, Purchase Orders, Invoices, and Payments**.
3. **Contract Section 5-8** are hereby re-numbered **Sections 4-7**, as follows:

A. Section 5. DIR Administrative Fee is re-numbered as **Section 4. DIR Administrative Fee**.

B. Section 6. Notification is re-numbered as **Section 5. Notification** and restated as follows:

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Shannon Kelley, CTPM, CTCM
Manager, Enterprise Contract Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 463-7666
Facsimile: (512) 475-4759

If sent to the Vendor:

Marcus Montemayor
AT & T Corp.
712 E. Huntland, Drive, Room 313
Austin, Texas 78752
Phone: (512) 421-5160
Facsimile: (512) 870-4388
Email: marcus.montemayor@att.com

- C. **Section 7. Managed Services Requirements** is re-numbered as **Section 6. Managed Services Requirements**.
- D. **Section 8. Statement of Work** is re-numbered as **Section 7. Statement of Work**.
- 4. **Contract, Section 9. Intellectual Property Matters**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Standard Terms Services Contracts, **Section 4. Intellectual Property Matters**.

At present, no development of new code or other customization, Intellectual Property is contemplated under this contract. At such time as Vendor and Customer agree to a scope of work involving new code development, the parties agree to negotiate applicable Intellectual Property provisions.

- 5. **Contract, Section 10. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts**, is hereby re-numbered **Section 8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts**.
- 6. **Appendix A, Standard Terms and Conditions for Services Contracts dated 6/8/12**, is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Services Contracts dated 02/04/15**.
- 7. **Contract, Section 8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts** is hereby updated and restated as follows:
 - A. **Appendix A, Section 2. Definitions, A. Customer**, is restated in its entirety as follows:

A. Customer - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any Texas local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code.
 - B. **Appendix A, Section 2. Definitions**, the following definitions are added to the Contract as follows:
 - H. **Affiliate** of a party means any entity that controls, is controlled by, or is under the common control with, such party.
 - I. **Damages** mean collectively all injury, damage, liability, loss, penalty, interest and expense incurred.
 - J. **Effective Date** for any Statement of Work means, the date on which the last party signs the Statement of Work unless a later date is required by regulation or law.

- K. Service Agreement** means the agreement executed by Customer for Services provided under this Contract, including any Statements of Work and/or Schedules.
- L. Service** means a service (including equipment) provided under this contract.
- M. Service Component** means an individual component of a Service provided under this Contract.
- N. Site** means Customer's physical location, including Customer's collocation space on AT&T's, its Affiliate's, or subcontractor's property, where AT&T installs or provides a Service.
- O. Order Fulfiller** means the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- C. Appendix A, Section 3. General Provisions, B. Modification of Contract Terms and/or Amendments, 2)**, is hereby restated in its entirety as follows:
- 2)** Customers shall not have the authority to modify the terms of the Contract; however, (a) additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Vendor may be added in a Purchase Order and (b) custom terms and conditions that do not conflict with the Contract (as mutually agreed by Vendor and Customer) may be added in a Statement of Work, and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- D. Appendix A, Section 3. General Provisions, B. Modification of Contract Terms and/or Amendments, 3)** is hereby restated in its entirety as follows:
- 3)** Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendor.
- E. Appendix A, Section 3. General Provisions, E. Survival**, is hereby restated in its entirety as follows:
- All applicable software license agreements, warranties or statement of work that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller prior to the expiration or termination of the Contract shall survive expiration or termination of the Contract.
- F. Appendix A, Section 3. General Provisions, F. Choice of Law**, is hereby restated in its entirety as follows:

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity or to waive any rights or defenses of Vendor.

- G. **Appendix A, Section 4. Intellectual Property Matters**, is hereby restated in its entirety as follows:

At present, no development of new code or other customization, Intellectual Property is contemplated under this contract. At such time as Vendor and Customer agree to a scope of work involving new code development, the parties agree to negotiate applicable Intellectual Property provisions.

- H. **Appendix A, Section 5. Terms and Conditions Applicable to State Agency Purchases Only, B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)**, is hereby restated in its entirety as follows:

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to use commercially reasonable efforts to coordinate all State agency commodity item sales through existing DIR contracts, but Vendor cannot be responsible for the actions of State agencies. Institutions of higher education are exempt from Subsection 5.B.

- I. **Appendix A, Section 6. Contract Fulfillment and Promotion, A. Service, Sales, and Support of the Contract**, is hereby restated in its entirety as follows:

A. Services, Sales and Support of the Contract

Subject to the availability and operation limitations of the Customer's necessary facilities and equipment, Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the

existence of the Contract. All sales to Customers for services available under the Contract shall be processed through the Contract.

- J. **Appendix A, Section 6. Contract Fulfillment and Promotion, C. Services Warranty and Return Policies**, is hereby restated in its entirety as follows:

C. Services Warranty and Return Policies

Vendor will adhere to the Vendor's then-currently published policies concerning services warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like services.

- K. **Appendix A, Section 7. Pricing, Purchases Orders, Invoices and Payments**, is hereby restated in its entirety as follows:

A. Customer Price

- 1) Customers purchasing services under this Contract shall negotiate pricing directly with the Vendor in accordance with the Customer's Statement of Work.
- 2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.
- 3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Texas Customer who is not purchasing those products or services under this Contract or (ii) any other Texas entity or consortia authorized by Texas law to sell said products and services to eligible Texas Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted to Texas Customers by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases or to any purchases outside the State of Texas. This Contract shall be amended within ten (10) business days to reflect the lower price.

B. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customer shall provide a tax exemption certificate upon request.

C. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum

rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in the contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

D. Purchase Orders

All Customer Purchase Orders will be placed directly with the Vendor. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor.

E. Invoices

Invoices shall be submitted by the Vendor directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision of acceptance of such services shall be made by the Customer to the Vendor.

Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to services, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the services by the Customer.

The administrative fee specified in the contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

F. Payments

- 1) Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.
- 2) For Customers who are not subject to Chapter 2251 and not Texas governmental entities, payment is due within thirty (30) days after the date of the invoice, and payment must refer to the invoice number. Vendor may charge late payment fees at the lower of 1.5% per month or the maximum rate allowed by law for overdue payments.

- L. **Appendix A, Section 9. Vendor Responsibilities, A. Indemnification**, is hereby restated in its entirety as follows:

A. Indemnification

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

2) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, AND/OR PERMITTED ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED REASONABLE COSTS, ATTORNEY FEES, AND EXPENSES for bodily injury (including death) or physical damage to tangible or real property to the extent directly arising out of, or resulting from any negligent acts or omissions, or willful misconduct of the Vendor or its agents, employees, subcontractors, Order Fulfillers in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR PERMITTED ASSIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

M. **Appendix A, Section 9. Vendor Responsibilities, B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE**, is hereby restated in its entirety as follows:

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY EMPLOYMENT BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, REASONABLE ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY OF VENDOR, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

N. **Appendix A, Section 9. Vendor Responsibilities, C. Vendor Certification**, is hereby restated in its entirety as follows:

C. Vendor Certifications

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (x) that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xi) have identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of

impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;

- (xiii) under Section 2155.006, Government Code, are not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; and
- (xiv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

O. Appendix A, Section 9. Vendor Responsibilities, G. Responsibility for Actions, 2), is hereby restated in its entirety as follows:

2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under the Certification Statement of Appendix A to the RFO and/or Section 9.C. (xi) and (xii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

P. Appendix A, Section 9. Vendor Responsibilities, H. Confidentiality, is hereby restated in its entirety as follows:

1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Texas Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release such Customer information to any party in any manner.

3) Confidential Information means: information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent identified as Confidential Information in writing; and

except as may be required by applicable law or regulation, the terms of this Agreement and any pricing or other proposals.

- a) **Obligations.** Each party's Confidential Information will permanently following its disclosure to the other party: (i) be held in confidence; and (ii) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 9.H., or to the extent compelled to be revealed by law (including the Texas Public Information Act), governmental authority or legal process (but only if such disclosure is limited to that which is compelled by such legal process and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law or legal process). These obligations will survive the expiration or termination of the Contract or any Purchase Order under it.
- b) **Exceptions.** The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.
- c) **Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business. Customer proprietary network information (CPNI) is defined as data collected about a customer's network and call records including call detail reports. Personally Identifiable Information (PII) is defined as information which can be used to uniquely identify, contact, or locate a single person or can be used with other sources to uniquely identify a single individual. Until directed otherwise by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's CPNI to any employee or agent of Customer without a need for further authentication or authorization. Any PII identified by the Customer and specifically designated physically or electronically as Customer PII disclosed to the AT&T personnel through any service effort must not be communicated, transmitted or disclosed in any manner without the written authorization of the Customer. If Customer does not want AT&T personnel to comprehend or transmit Customer CPNI or PII data to which they may have access in performing services, Customer should identify such data, encrypt, mask, obfuscate, or otherwise protect such data so that it will be unintelligible.

Q. Appendix A, Section 9. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel, is hereby restated in its entirety as follows:

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. The Customer will give Vendor a written copy of any applicable

security requirements, and a reasonable opportunity to review the requirements and discuss the requirements and their impact on project performance, schedule and price with Customer before agreeing to the security requirements.

- R. **Appendix A, Section 9. Vendor Responsibilities, L. Overages**, is hereby restated in its entirety as follows:

Vendor hereby assigns to DIR any and all of its claims against its suppliers for overcharges associated with products and services provided to DIR and Customers under this contract, if such claims arise under the antitrust laws of the United States, 15 U.S.C. Section 1, et seq., (1973), as amended and the antitrust laws of the State, Sections 15.01, et seq., Texas Business & Commerce Code.

- S. **Appendix A, Section 9. Vendor Responsibilities, N. Required Insurance Coverage**, is hereby restated in its entirety as follows:

As a condition of this Contract with DIR, Vendor shall provide evidence of the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are at least A minus financially rated by AM Best or A by Standard and Poors and duly admitted, and authorized to do business in the State of Texas. The Customer and DIR will be included as Additional Insureds on all required auto and general coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer included as an additional insured;
- d) underwriters will endeavor to provide at least 30-day Notice of cancellation to DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per accident for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) underwriter will endeavor to provide at least 30-day Notice of Cancellation; and
- c) Additional Insured.

- T. **Appendix A, Section 9. Vendor Responsibilities, T. Deceptive Trade Practices**, is hereby restated in its entirety as follows:

Vendor represents and warrants that (i) neither Vendor nor any of its Subcontractors has within the last three years been found liable in any administrative hearing, litigation or other proceedings of Deceptive Trade Practices violations under Chapter 17, Texas Business & Commerce Code; and (ii) it has no officers who have been found liable in any administrative hearing litigation or other proceedings of Deceptive Trade Practices violations.

- U. **Appendix A, Section 9. Vendor Responsibilities, X. Disclaimer of Warranties**, is hereby added to the Contract as follows:

Disclaimer of Warranties. EXCEPT AS SET FORTH IN SECTION 8.A.3) "Infringements" OF THIS AGREEMENT, AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER'S DATA AND CONFIDENTIAL INFORMATION.

- V. **Appendix A, Section 9. Vendor Responsibilities, Y. Disclaimer of Liability**, is hereby added to the Contract as follows:

Disclaimer of Liability. AT&T WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY AT&T'S GROSS NEGLIGENCE OR *WILLFUL*

MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT OR A Statement of Work); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATE'S, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

W. **Appendix A, Section 9. Vendor Responsibilities, Z. Application and Survival**, is hereby added to the Contract as follows:

Application and Survival. The disclaimer of warranties and limitations of liability set forth in this Contract will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section 10 will survive failure of any exclusive remedies provided in this Contract.

X. **Appendix A, Section 10. Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation**, is hereby restated in its entirety as follows:

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

By executing the Purchase Order or Statement of Work, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. In the event Customer is unable to obtain the necessary appropriations or funding for the Services provided under the Purchase Order or Statement of Work, Customer may terminate the Purchase Order or Statement of Work without liability for the termination charges set forth in Section 7.B.9. Termination of the Purchase Order or Statement of Work for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available.

b) If, after the first fiscal year in which a particular Service acquired hereunder is installed, funds are not appropriated to continue paying for that particular Service in a subsequent fiscal year, then Customer may terminate that particular Service as of the last day for which funds were appropriated ("Date of Termination"), without being subject to termination charges set forth in the applicable Statement of Work; provided, however; that Customer shall be obligated to pay all charges incurred through the Date of Termination. Customer will make reasonable effort to notify Vendor thirty (30) days before the end of available appropriations; however, failure to do so will not subject customer to liability beyond the available appropriation.

2) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

Y. Appendix A, Section 10. Contract Enforcement, B. Termination, 2) Absolute Right, is hereby restated in its entirety as follows:

2) Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

Z. Appendix A, Section 10. Contract Enforcement, B. Termination, 3) Termination for Convenience, 3), is hereby restated in its entirety as follows:

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order within thirty (30) days of issuance of the Purchase Order if it is reasonably determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

AA) Appendix A, Section 10. Contract Enforcement, B. Termination, 4) Termination for Cause, a) Contract, is hereby restated in its entirety as follows:

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions.

(i) First, if the claim is raised by Vendor, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute.

(ii) Second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, or if Chapter 2260 is not applicable because the claim is raised by DIR or otherwise, then the non-defaulting party shall give written notice of default and allow the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default

(iii) Vendor has the right to terminate or suspend provision of an affected Service or Service component with respect to a Customer that is either a private institution of higher education or an assistance organization as both are described in the Definitions section of this Appendix A, upon thirty (30) days prior written notice (or such other timeframe as is reasonably practicable under the circumstances) to DIR and the affected Customer (1) if such Customer (A) commits a fraud upon Vendor; (B) utilizes the Service to commit a fraud upon another party; (C) unlawfully uses the Services; (D) abuses or misuses Vendor's network of Service; or (E) materially interferes with another customer's use of Vendor's network of Service; or (2) if such Customer fails to pay undisputed charges due for the affected Service or Service component, provided such failure continues remedied for 30 days after receipt of notice.

BB) Appendix A, Section 10. Contract Enforcement, B. Termination, 4) Termination for Cause, b) Purchase Order or Statement of Work, is hereby restated in its entirety as follows:

b) Purchase Order or Statement of Work

Customer or Vendor may terminate a Purchase Order or Statement of Work upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or Statement of Work in accordance with Section 10.A.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order or Statement of Work.

CC) Appendix A, Section 10. Contract Enforcement, B. Termination, 5) Customer Rights Under Termination, is hereby restated in its entirety as follows:

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and as it relates to any Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract. However, such Purchase Order shall expire no later than the end of its then effective term, and shall not be subject to renewal and/or extension unless the Vendor and Customer mutually agree in writing.

DD) **Appendix A, Section 10. Contract Enforcement, B. Termination, 6) Vendor or Order Filler Rights Under Termination**, is hereby restated in its entirety as follows:

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date if such products or services have been and ultimately accepted by Customer, and 2) (in the event of early termination of Purchase Order) any applicable early termination fees as set forth in this Contract.

EE) **Appendix A, Section 10. Contract Enforcement, B. Termination, 7) Suspension and Termination of Services**, is hereby added to the Contract as follows:

The following additional suspension and termination of Services provisions apply:

- a) **Fraud or Abuse.** AT&T may terminate or suspend an affected Service immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer (i) commits a fraud upon AT&T, (ii) utilizes the Service to commit a fraud upon another party, (iii) unlawfully uses the Service, (iv) abuses or misuses AT&T's network or Service, or (v) interferes with another customer's use of AT&T's network or services.
- (b) **Materially Adverse Change.** If AT&T revises a Service Publication and the revision has a materially adverse impact on Customer, and AT&T does not effect revisions that remedy such materially adverse impact within 30 days after notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to AT&T, given not later than 90 days after Customer first learns of the revision to the Service Publication. "Materially adverse impacts" do not include changes to non-stabilized pricing, changes required by governmental authority, or assessment of or changes to additional charges such as surcharges or taxes.
- (c) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after notice from AT&T, AT&T may suspend (and later terminate) or terminate the Service. If Services are provided over or access the Internet, AT&T may act immediately and without notice to suspend or terminate Service in response to a court order or government notice that certain conduct must be stopped or when AT&T reasonably determines (i) that it may be exposed to sanctions or prosecution; (ii) that such violation may cause harm to or interfere with the integrity or normal operations or security of AT&T's network or networks with which AT&T is interconnected or interfere with another customer's use of AT&T services or the Internet; or (iii) that continuation of the Services otherwise presents imminent risk of harm to AT&T or AT&T's customers or their respective employees.

FF) **Appendix A, Section 10. Contract Enforcement, B. Termination, 8) Effect of Termination**, is hereby added to the Contract as follows:

- a) Termination by either party of a Service Component or Service does not waive any other rights or remedies a party may have under the Statement of Work. Termination or suspension of a Service Component or Service will not affect the rights and obligations of the parties regarding any other Service.

b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination. If Customer terminates a Service or Service Component prior to the date Customer's obligation to pay for Services begins, Customer will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

GG) Appendix A, Section 10. Contract Enforcement, B. Termination, 9) Termination Charges, is hereby added to the Contract as follows:

If, on or after Customer's obligation to pay for Services begins, Customer terminates a Purchase Order or Statement of Work for convenience or Vendor terminates a Purchase Order or Statement of Work for Customer's fraud or abuse, Customer's hazardous materials violations, or Customer's material breach, Customer will pay termination charges as follows:

If termination occurs before the end of the term of the Statement of Work, 50% (unless a lower percentage is specified in the Statement of Work) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in the term, plus any unpaid non-recurring charges identified in the Statement of Work, plus any charges incurred by AT&T from a third party (e.g., not an AT&T Affiliate) identified in the Statement of Work, due to the termination.

HH) Appendix A, Section 10. Contract Enforcement, C. Force Majeure, is hereby restated in its entirety as follows:

DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented due to an act of God, strike, war, civil disturbance, epidemic, loss or damage due to fire, explosion, cable cuts not caused by AT&T or its agents, power blackout, earthquake, flood, embargo, , acts of civil or military authority, acts of a public enemy, acts or omissions of carriers, acts of regulatory or governmental agencies, or court order, or other events recognized as force majeure under Texas law, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order within thirty (30) days of the issuance of the Purchase Order if it is reasonably determined by the Customer that, as a result of a Force Majeure event, Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

II) Appendix A, new Section 13. Import/Export Control, is hereby added to the Contract as follows:

The parties acknowledge that equipment, services, software, and technical information (including technical assistance and training) provided under this Contract may be subject to import and export laws, conventions or regulations, and any use or transfer of the equipment, products, software, and technical information must be in compliance with all such laws, conventions and regulations. The parties will not use, distribute, transfer, or transmit the equipment, services, software, or technical information (even

if incorporated into other products) except in compliance with such laws, conventions and regulations. Customer, not AT&T, is responsible for complying with such laws, conventions and regulations for all information, equipment and software Customer transmits between countries using the Services.

JJ) **Appendix A, new Section 14. No Third Party Beneficiaries**, is hereby added to the Contract as follows:

This Agreement is for the benefit of permitted Customers and AT&T, and does not provide any third party (including Users) the right to enforce or bring an action for any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

KK) **Appendix A, new Section 15. Survival**, is hereby added to the Contract as follows:

Application and Survival. The disclaimer of warranties and limitations of liability set forth in this Contract will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section 8 will survive failure of any exclusive remedies provided in this Contract.

LL) **Appendix A, new Section 16. AT&T Deliverables**, is hereby added to the Contract as follows:

- A. **Services.** AT&T agrees to either provide or arrange to have an AT&T Affiliate provide Services to Customer in accordance with this Contract, subject to availability and operational limitations of systems, facilities and equipment. Where required, an AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider.
- B. **AT&T Equipment.** Services may include use of certain equipment owned by AT&T that is located at the Site ("AT&T Equipment"), but title to the AT&T Equipment will remain with AT&T. Customer must provide electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to AT&T Equipment (other than ordinary wear and tear) except to the extent caused by AT&T or its agents.
- C. **Software.** Any software used with the Services will be governed by the written terms and conditions applicable to such software. Title to software remains with AT&T or its supplier. Customer must comply with all such terms and conditions and they take precedence over this Contract as to such software.

NN) **Appendix A, new Section 17. Customer's Cooperation**, is hereby added to the Contract as follows:

- A. **Access Right.** Customer will in a timely manner allow AT&T to access property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain, at Customer's expense, timely access for AT&T to property that Customer does not control (other than public property) as

reasonably required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as necessary for Customer's connection to AT&T's network. Customer must provide AT&T timely information and access to Customer's facilities and equipment as AT&T reasonably requires to provide the Services, subject to Customer's reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items reasonably required to perform installation of the Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

- B. **Safe Working Environment.** Customer will ensure that the location at which AT&T installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. AT&T does not handle, remove or dispose of Hazardous Materials, and AT&T has no obligation to perform work at a location that is not a suitable and safe working environment. AT&T will not be liable for any Hazardous Materials. If AT&T encounters any Hazardous Materials at the Site where AT&T is to install, maintain or provide Services, AT&T may terminate the affected Service or Service Component, or suspend performance until Customer removes and remediates Hazardous Materials at Customer's expense in accordance with applicable law.
- C. **Users.** "User" means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement, and Customer agrees that Customer is responsible for Users' use of any Services, unless expressly provided to the contrary in applicable Service Publications.
- D. **Resale of Services.** Customer may not resell the Services to third parties without AT&T's written consent. Where permitted under applicable law, Customer may resell the Services to Customer's Affiliates without AT&T's consent.
- E. **Internet Services.** If a Service is provided over or accesses the Internet, Customer, Customer's Affiliates, and Users must comply with the AUP.

OO) **Appendix A, new Section 18. Overview of Documents**, is hereby added to the Contract as follows:

The terms and conditions governing the Services that AT&T provides to Customer are set forth in the Contract, Statement of Work and the following additional documents, and any other documents executed by the parties and referencing this Contract (which documents together with this Contract are called "this Contract"):

- 8. All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the

provisions, the order of precedence shall be Amendment Number 2, then Amendment Number 1 and then the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last party to sign, but in all events no later than May 28, 2015.

AT & T CORP.

Authorized By: signature on file

Name: Gabriela Ratulowski

Title: Contract Management

Date: 6-15-15

**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: signature on file

Name: Wayne Egeler

Title: Director, Communications Technology Services

Date: 7-10-15

Office of General Counsel: 7-9-15